

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000304-001 DT

07/16/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT

J. Eaton

Deputy

STATE OF ARIZONA

ANDREW M DAVIDSON

v.

ANGELA JUNE FRYER (001)

ANGELA JUNE FRYER

1044 N 191ST AVE

BUCKEYE AZ 85326

REMAND DESK-LCA-CCC

TEMPE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case No. 12-045574-2.

Defendant-Appellant Angela June Fryer (Defendant) was convicted in Tempe Municipal Court of failure to remain at the scene of an accident and to provide information at the scene of a collision. The trial court found Defendant responsible for failure to control speed to avoid a collision. Defendant contends the trial court abused its discretion by finding Defendant (1) guilty of failure to remain at the scene of an accident and to provide information at the scene of a collision and (2) responsible for failure to control speed to avoid a collision. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On September 8, 2012, Defendant was cited for failure to remain at the scene of an accident and to provide information at the scene of a collision, A.R.S. § 28-662(A)(2); failure to control speed to avoid a collision, A.R.S. § 28-701(A); and failure to update address on registration, A.R.S. § 28-448(A). On January 18, 2012, a trial court held a bench trial.

The victim, Nicole Pomeroy, testified that, on September 8, 2012, at approximately 4:00 p.m., she was driving southbound on Priest Drive approaching Baseline Road in Tempe. (Audio Recording on Jan. 18, 2012, at 1:55-2:04.) While driving approximately 40 m.p.h., she saw a vehicle approaching her from behind “very fast.” (*Id.* at 2:11-2:35.) She proceeded to move her car to the right lane in order to get out of the way of the approaching vehicle. (*Id.* at 2:35-2:58.) The approaching vehicle also moved into the right lane and made contact with the victim’s car. (*Id.* at 3:05-3:23.) She said she felt the impact as a “jolt” that pushed her forward. (*Id.* at 4:16-4:34.) After the collision, the vehicle moved back to the middle lane and proceeded southbound on Priest Drive. (*Id.* at 3:32-3:41.) The victim was able to identify the vehicle as a “small white car,” and the driver of the vehicle as a woman with dark hair. (*Id.* at 3:41-4:00.) She was also able to record the license plate of the vehicle, which she reported to police. (*Id.* at 4:35-4:55.)

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Detective Greg Mayer testified that, after receiving the license plate information, he was able to trace ownership of the vehicle to Defendant. (*Id.* at 6:50–7:08.) He attempted to contact her at the address and phone number listed with the MVD and through her stepfather. (*Id.* at 7:08–7:56.) Defendant then contacted Detective Mayer after being informed by her stepfather that she was being sought. (*Id.* 7:57–8:07.) Detective Mayer further testified that he informed Defendant of the accident. (*Id.* at 8:07–8:20.) Detective Mayer met with Defendant and exchanged information on behalf of the victim. (*Id.* at 9:23–9:59.)

The trial court informed Defendant she was allowed to testify on her own behalf. Defendant testified that she was in possession of the vehicle and that she drove the vehicle to and from her work on the day of the accident. (*Id.* at 17:26–18:00.) She was at work that day from approximately 7:00 A.M. to 3:30 P.M. (*Id.* at 8:39–8:55.)

Based on the above evidence, the trial court found Defendant (1) guilty of failure to remain at the scene of an accident and to provide information at the scene of a collision and (2) responsible for failure to control speed to avoid a collision. (*Id.* at 25:25–25:42.) The trial court found Defendant not responsible for the charge of failure to update address on registration. (*Id.* at 25:42–26:05.) The trial court sentenced defendant to pay a fine of \$508 and provide her insurance information to the victim for restitution purposes. (*Id.* at 28:10–28:52.) On January 22, 2013, Defendant filed timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION ART. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE STATE PRESENT SUFFICIENT EVIDENCE THAT DEFENDANT WAS GUILTY OF THE CHARGES AGAINST HER.

Defendant contends the State did not present sufficient evidence that she was (1) guilty of failure to remain at the scene of an accident and to provide information at the scene of a collision and (2) responsible for failure to control speed to avoid a collision. In addressing the issue of the sufficiency of the evidence, the Arizona Supreme Court has said the following:

We review a sufficiency of the evidence claim by determining “whether substantial evidence supports the jury’s finding, viewing the facts in the light most favorable to sustaining the jury verdict.” Substantial evidence is proof that “reasonable persons could accept as adequate . . . to support a conclusion of defendant’s guilt beyond a reasonable doubt.” We resolve any conflicting evidence “in favor or sustaining the verdict.”

State v. Bearup, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009) (citations omitted). When considering whether a verdict is contrary to the evidence, this court does not consider whether it would reach the same conclusion as the trier of fact, but whether there is a complete absence of probative facts to support the conclusion. *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988).

In the present case, Defendant was convicted of leaving the scene of an accident. The applicable statute provides:

- A. The driver of a vehicle involved in an accident resulting only in damage to a vehicle that is driven or attended by a person shall: . . .
- 2. Remain at the scene of the accident until the driver has fulfilled the requirements of section 28-663.

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A.R.S. § 28-662(A)(2). The evidence presented at trial showed Defendant was in possession of the vehicle that struck Victim's car on the day of the accident. She testified that she used it to drive to and from work. She was at work on the day of the accident from approximately 7:00 A.M. to 3:30 P.M. (A.R. on Jan. 18, 2013, at 8:39-8:55, 17:26-18:00.) The time of the accident was approximately 4:00 P.M. and it took place near her work. (*Id.* at 8:55-9:11.) According to testimony, the driver of Defendant's vehicle at the time of the accident was a Caucasian woman with dark hair. (*Id.* at 3:41-4:00.)

Defendant was also convicted of failing to control the speed of her vehicle in order to avoid a collision. The applicable statute provides:

A. A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the circumstances, conditions[,] and actual and potential hazards then existing. A person shall control the speed of a vehicle as necessary to avoid colliding with any object [or] vehicle or other conveyance

A.R.S. § 28-701(A). There has been no factual dispute that there was a collision between Defendant's vehicle and the victim's vehicle. At trial, the victim testified that she saw Defendant's vehicle approaching "very fast" and that she changed lanes to get out of the way. (A.R. of Jan. 18, 2012, at 2:11-2:58.) Defendant's vehicle then followed the victim into the right lane and was unable to stop in time to avoid a collision. (*Id.* at 3:05-3:23.) This was sufficient evidence to show Defendant failed to control the speed of her vehicle in order to avoid a collision.

III. CONCLUSION.

Based on the foregoing, this Court concludes the State did present sufficient evidence to prove beyond a reasonable doubt that Defendant's actions violated the statute.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Tempe Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Tempe Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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